

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

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<b>In re</b>		)	
		)	
<b>MONTREAL MAINE &amp; ATLANTIC RAILWAY, LTD.</b>		)	<b>CHAPTER 11</b>
		)	<b>CASE NO. 13-10670-LHK</b>
		)	
<b>Debtor</b>		)	
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**WRONGFUL DEATH CLAIMANTS' OBJECTION TO APPLICATION FOR ORDER,  
PURSUANT TO SECTIONS 328, 330, AND 1103 OF BANKRUPTCY CODE,  
AUTHORIZING EMPLOYMENT AND RETENTION OF PAUL HASTINGS LLP AS  
COUNSEL TO OFFICIAL COMMITTEE OF VICTIMS, EFFECTIVE AS OF  
DECEMBER 10, 2013**

The Unofficial Committee of Wrongful Death Claimants (the "WD Committee"), consisting of representatives of the estates of the 46 victims of the massive explosion in Lac-Mégantic, Quebec (the "Wrongful Death Claimants") caused by the derailment of a train operated by Montreal Maine & Atlantic Railway, Ltd. (the "Derailment"), with civil actions against parties other than the Debtor (the "Illinois Actions"), hereby object to the application of the Official Committee of Victims ("Victims' Committee") motion to employ Paul Hastings LLP as counsel for the Victims' Committee [Docket No. 559] (the "Application"), stating as follows:

**BRIEF BACKGROUND**

On October 18, 2013, this Court entered an Order Authorizing the Appointment of a Victims' Committee (the "Order"). (See Docket No. 391.) Thereafter, the members of the Victims' Committee were named by the U.S. Trustee and, according to the Application, met on December 10, 2013 and voted to employ Paul Hastings LLP ("Paul Hastings") as its bankruptcy

counsel. For the reasons set forth below, the WD Committee objects to the employment of Paul Hastings.

### ARGUMENT

#### 1. Employment of Paul Hastings violates Me. R. Prof Conduct 1.7.

To the extent that Paul Hastings is employed by this Court to represent the Victims Committee, the Maine Bar Rules and the Maine Rules of Professional Conduct apply to the firm's representation of this client. See Maine Bar Rules 1(a); cf. Me. Prof. Ethics Comm'n, Op. No. 189 (Nov. 5, 2005) ("First, we note that the Maine Bar Rules govern any attorney who practices law in Maine, regardless of whether that attorney is admitted to practice law in Maine.")

Rule 1.7(a) of the Maine Rules of Professional Conduct provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict-of-interest." A concurrent conflict-of-interest is defined, in relevant part, as a situation wherein "the representation of one client would be directly adverse to another client, even if the representation would not occur in the same matter or in substantially related matters," or "there is a significant risk that the representation of one or more clients would be materially limited by the lawyer's responsibilities to another client." Me.R. Prof. Conduct 1.7(a)(1), (2); see also Me.R. Prof. Conduct 1.7 cmt. (6) ("Thus, absent a determination by the lawyer that the conflict is consentable and the grant of consent by the client, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.") The Maine Rules of Professional Conduct further provide that, when one member of a law firm has a

conflict under Rule 1.7, then the conflict is imputed to other lawyers in the firm. See Me.R. Prof. Conduct 1.10(a).

According to Exhibit 1 to the Affidavit of Luc A. Despins filed in support of the Application, Paul Hastings currently represents World Fuel Services Corporation (“World Fuel”). (Docket No. 559 at 29.) However, World Fuel has been named as a defendant in an adversary proceeding commenced by Robert Keach, as trustee of the Debtor’s estate, against World Fuel and others. See Keach v. World Fuel Services Corp. et al., Adv. Pro. No. 14-01001. The complaint seeks to recover damages from World Fuel on account of its alleged misconduct that helped cause the Derailment. In addition, World Fuel is a defendant in wrongful death actions currently pending in Illinois arising from the train derailment, including Roy v. Western Petroleum Company, et al., Case No. 13-cv-06192 (N.D. Ill.); and Begnoche v. Western Petroleum Company, et al., Case No. 13-cv-06257 (N.D. Ill.). Finally, affiliates of World Fuels have already filed proofs of claim in this case, and World Fuels itself has threatened to file proofs of claim for indemnity, contribution or subrogation if it is found liable in the Illinois wrongful death actions.<sup>1</sup> Paul Hastings’ representation of World Fuel, which is alleged to have helped cause the explosion resulting from the Derailment, even in matters unrelated to the

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<sup>1</sup> World Fuels told the District Court: “[T]he WFS Entities deny all liability to the [Wrongful Death Claimants]. If, however, the WFS Entities were found liable, then they would have the right to recover from MMA, to the extent they did not recover from another party.” Footnote 7, immediately following, explains: “The WFS Entities reserve all rights to assert (a) contribution, indemnification, and subrogation claims against any other party . . . , and (b) additional damage claims against all parties, including MMA . . . .” Subrogation claims are particularly significant because World Fuels will assert that it is not only subrogated to the claims of the Wrongful Death Claimants but also their administrative expense priority under section 1171(a) of the Bankruptcy Code. Memorandum of Law filed by World Fuels *et al.* in support of their motion to transfer the Illinois wrongful death actions to Maine, at 6-7 [Docket No. 206, in this Court].

Derailment, while at the same time (ostensibly) representing the interests of the victims of the Derailment, is a non-waivable conflict of interest for Paul Hastings under Maine law.

It is no answer to the conflict to say that “the amount billed by [Paul Hastings] to World Fuel Services Corporation during the current fiscal year constitutes approximately .01% of the Firm’s total annual revenue to date.” (Docket No. 559 at 29.) This is actually a shameful response to an argument that Paul Hastings apparently anticipated. Of course, a lawyer’s duties to his client do not depend on how much (or how little) a client pays him or his firm. A lawyer owes the same duties to his higher-paying clients as he does to his lower paying and even pro bono clients. The duty of loyalty is not administered pursuant to a sliding-scale, commensurate with the billings generated by the particular client.

Permitting Paul Hastings to simultaneously represent World Fuel, even in matters unrelated to the adversary proceeding in this case and the wrongful death actions pending in Illinois, while, at the same time, permitting it to represent the Victims’ Committee, may be akin to allowing the proverbial fox to guard the henhouse. Or maybe not. Regardless, the tension between the interests of World Fuel and the interests purportedly represented by the Victims’ Committee is palpable and real. It is for this reason that the Maine Rules of Professional Conduct prohibit this concurrent conflict-of-interest.

For the reasons given above, the WD Committee respectfully requests that this Court deny the Application.

**2. Employment of Paul Hastings violates 11 U.S.C. § 1103(b).**

Title 11, United States Code section 1103(a) permits an unsecured creditors committee to employ, with court approval, an attorney to represent and perform services for the committee.

Subsection (b) of 1103, however, provides that an attorney so employed “may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case.” As more fully described above, World Fuels has interests adverse to the Victims’ Committee and the estate by reason of (1) the estate’s claims against World Fuels in the adversary proceeding commenced by the trustee, (2) the claims of the Wrongful Death Claimant filed against World Fuels in Illinois, (3) the claims already asserted against the Debtor’s estate by affiliates of World Fuels through the filing of proofs of claim, and (4) the claims for indemnity, contribution or subrogation that World Fuels has threatened to assert against the Debtor’s estate if it is found liable in the Illinois wrongful death actions. Under the wording of the statute, Paul Hastings’ representation of the Victims’ Committee in this case, and World Fuel generally, is prohibited under 11 U.S.C. § 1103(b).

In addition to the foregoing, some courts have looked to the “adverse interest” and “disinterested person” standards found in 11 U.S.C. § 327 for purposes of analyzing 11 U.S.C. § 1103(b). In In re Caldor, 193 B.R. 165 (Bank. S.D.N.Y. 1996), the trustee argued that the court should “be guided by decisions under § 327(a) in determining whether [one committee] had an ‘adverse interest’ for purposes of § 1103(b).” Id. at 170. In rejecting the argument of a law firm and accounting firm that § 1103(b) does not incorporate the “adverse interest” or “disinterested” standards, the bankruptcy court held that a professional employed under § 1103(b) will be denied compensation if “he is not a disinterested person or holds an interest adverse to the interest of the estate,” as set forth in 11 U.S.C. § 328(c). Id. at 171. The court, therefore, concluded that the standards of § 327(a) are applicable. Id.

Title 11, United States Code section 327(a) bars the employment of professionals who may have a conflict of interest: “Except as otherwise provided in this section, the trustee, with the court’s approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate and that are disinterested persons . . .”

A “disinterested person” is a person who “does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, or connection with, or interest in, the debtor, or for any other reason.” 11 U.S.C. § 101(14). Courts interpreting § 101(14) have required that professionals be free from any “scintilla of personal interest” that might impact the professional’s decision making. See In re Asher, 168 B.R. 614, 617 (Bankr. N.D. Ohio 1994). Professionals are expected to tender “undivided loyalty” and provide “untainted advice.” Rome v. Braunstein, 19 F.3d 54, 58 (1st Cir. 1994).

In sum, “the twin requirements of disinterestedness and lack of adversity telescope into what amounts to a single hallmark,” namely whether Paul Hastings’ representation of World Fuel creates “a meaningful incentive to act contrary to the best interest of the [Victims’ Committee]—an incentive sufficient to place those parties at more than acceptable risk—or the reasonable perception of one.” In re Martin, 817 F.2d 175, 180 (1st Cir. 1987).

It is clear that the Paul Hastings’ representation of World Fuel at the same time that it may represent the Victims’ Committee is as much an actual conflict as one giving rise to the appearance of impropriety. Id. at 180-81 (“Section 327 is intended, however, to address the appearance of impropriety as much as its substance, to remove the temptation and opportunity to do less than duty demands.”) It is difficult to see how Paul Hastings can advocate for the

interests of the Victims' Committee, representing victims of the explosion in Lac Megantic, while Paul Hastings separately represents World Fuel, which is a defendant in litigation brought by constituents of the Victims' Committee as well as by the Trustee accusing World Fuels of responsibility for the explosion. The loyalties that Paul Hastings owes to its respective clients conflict and it cannot be said to be disinterested. See In Re Tri Manufacturing & Sales, Co., 51 B.R. 178 (Bank. S.D. Ohio 1985) (prohibiting representation by lawyer of unsecured creditors committee at the same time as attorney representing an individual who had an interest adverse to the debtor).

For these reasons, the WD Committee respectfully requests that this Court not enter an order approving Paul Hastings as counsel for the Victims' Committee.

**3. The amounts sought to be charged by Msrs. Despins and Fong may be unreasonable.**

To the extent that this Court authorizes the employment of Paul Hastings under 11 U.S.C. 1103, it must do so on "reasonable terms and conditions of employment." 11 U.S.C. § 328(a). To the extent that that this Court authorizes the employment of Mr. Despins, the WD Committee has no objection to his being employed at the rate of \$550.00 per hour. Such a rate is comparable to the rates for certain counsel from Portland, Maine. However, the WD Committee objects to the extent that Mr. Despins would seek approval of fees at his standard hourly rate of \$1,100.00 as that amount is not customary in this community.

The WD Committee objects to Mr. Fong, an associate with Paul Hastings who has been a practicing lawyer for only about six years, charging an amount in excess of Mr. Despins and other more experienced counsel in this matter. The amount sought to be charged by Mr. Fong is certainly not reflective of the rates charged in this legal community for an attorney of Mr. Fong's

experience. For this reason, the WD Committee asks that this Court, to the extent that it authorizes the employment of Mr. Fong for the Victim's Committee, to reduce his hourly rate to the customary amount in this district for an attorney of his experience.

Marie Semie Alliance, *et al.*

By their attorneys,

Date: February 4, 2014

/s/ George W. Kurr, Jr., Esq.

George W. Kurr, Jr.

GROSS, MINSKY & MOGUL, P.A.

23 Water Street, Suite 400

P. O. Box 917

Bangor, ME 04402-0917

Phone: (207) 942-4644 ext. 206

Fax: (207) 942-3699

gwkurr@grossminsky.com

Daniel C. Cohn, *pro hac vice*

Taruna Garg, *pro hac vice*

MURTHA CULLINA LLP

99 High Street, 20th Floor

Boston, Massachusetts 02110

Phone: (617) 457-4000

Fax: (617) 482-3868

#### CERTIFICATE OF SERVICE

I, George W. Kurr, Jr., Esquire, of the firm Gross, Minsky & Mogul, P.A., attorneys for the Estates of Marie Semie Alliance, et al, Wrongful Death Claimants hereby certify that on February 4, 2014, I electronically filed **WRONGFUL DEATH CLAIMANTS' OBJECTION TO APPLICATION FOR ORDER, PURSUANT TO SECTIONS 328, 330, AND 1103 OF BANKRUPTCY CODE, AUTHORIZING EMPLOYMENT AND RETENTION OF PAUL HASTINGS LLP AS COUNSEL TO OFFICIAL COMMITTEE OF VICTIMS, EFFECTIVE AS OF DECEMBER 10, 2013** with the Court via the CM/ECF electronic filing system which will send notification of such filing to the attorneys/parties of record who have registered as CM/ECF participants.

/s/ George W. Kurr, Jr., Esq.

George W. Kurr, Jr., Esq.